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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 532

PATRICIA ROGERS, *et al.*,

Petitioners,

—v.—

DR. EDGAR F. PAUL, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND MOTION TO ADD ADDITIONAL PARTY PLAINTIFFS

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PATRICIA ROGERS, *et al.*,

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DR. EDGAR F. PAUL, *et al.*

I

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND MOTION TO ADD ADDITIONAL PARTY PLAINTIFFS

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the Eighth Circuit entered in the above-entitled cause on May 7, 1965, and that this Court grant petitioners' motion to add additional party plaintiffs.

Citations to Opinions Below

The opinion of the District Court (R. 43), printed in the Appendix hereto, *infra,* p. 1a, is reported in 232 F. Supp. 833. The opinion of the Court of Appeals (R. 44), printed in the Appendix hereto, *infra,* p. 29a, is reported in 345 F. 2d 117.

Jurisdiction

The judgment of the Court of Appeals was entered on May 7, 1965 (p. 49a, *infra*). Mr. Justice White, on July 30, 1965, extended the time for filing the petition for certiorari until September 4, 1965. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

Questions Presented

The following questions are now posed for resolution by this Court:

1. Whether the Board's grade-a-year desegregation plan can be sustained under *Brown* v. *Board of Education,* in the absence of valid administrative problems justifying delay of complete desegregation until 1968, where such delay condemns petitioners and all other Negro pupils now in high school to complete their public school education in a segregated school, clearly inferior to high schools to which all white pupils are assigned?

2. Whether petitioners have standing to seek and should be afforded relief now requiring the school board to cease assignment of teachers on the basis of race?

Constitutional Provision Involved

This case involves Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Statement of the Case

Petitioner, Mrs. Corine Rogers, filed this action to desegregate the public schools in Fort Smith, Arkansas, in September 1963 (R. 1), after unsuccessfully attempting to obtain transfer of her two minor daughters, Patricia and Janice, from the Negro Lincoln High School to the white Northside High School (R. 7).[1]

Negro parents whose children now constitute less than ten percent (R. 65) of the 14,000 students (R. 57) presently attending the system's 30 schools (R. 54) began efforts to desegregate the Fort Smith schools in 1954 immediately after this Court's decision in *Brown* v. *Board of Education* (R. 75). The Board promised citizens that they would study the matter (R. 76). The following year, after the second *Brown* decision, the local NAACP again petitioned the Board for a meeting to discuss school desegregation, and as a result, several meetings were held (R. 76).

In September 1957, the Board placed into effect a grade-a-year desegregation plan adopted the year before (R. 12), providing for the enrollment of first grade children each year without regard to race or color. Thus, Negro children entering the first grade in the Fall of 1957 were permitted to enroll in a white school, but only if they resided in the attendance area or zone served by the white school (R. 49).

---

[1] Janice Rogers graduated from the Lincoln School after this suit was filed (R. 110). Patricia Rogers, however, is enrolled in the twelfth grade at the Lincoln School, and a motion filed with this petition, p. 35, *infra*, seeks to add as minor petitioners in this case, Vera Moore and Karen Jones, both of whom are now enrolled in Lincoln High School. Thus, this case presents issues uncomplicated by problems of mootness. Moreover, the questions presented are of general public importance. See *United States* v. *Parke, Davis & Co.*, 365 U. S. 125; *United States* v. *Trans-Missouri Freight Assoc.*, 166 U. S. 290, 308-10.

Where assignment would place the child in a school where the majority of pupils were of another race, a provision of the plan permitted transfer to a school where a majority of the pupils were of the child's race (R. 22).

By June 1963, when petitioner, Mrs. Rogers, requested transfer for her daughters (R. 7), both were in high school and the Board's plan had reached only grade six. The transfer applications were denied (R. 12), leading to this action for injunctive relief: to require their immediate admission to the Northside School, and to require the immediate desegregation of the school system, including assignment of pupils and faculty on a nonracial basis and the elimination of racial considerations from budgets and all other school programs (R. 2, 8-10).

During the first seven years of the plan's operation, only 121 Negroes and 110 white first grade pupils resided in attendance areas enabling them to enter school on a desegregated basis (R. 24-29, 51-52). Eighty-five Negro and all 110 white pupils chose to attend segregated schools (R. 29). No desegregated assignments were permitted above the grades reached by the plan, even though Negroes have made requests for such assignments (R. 78-79). The plan, moreover, fails to indicate how Negro pupils residing in white attendance areas but enrolled in Negro schools for grade one could later be assigned to white schools. As a result, only about 37 Negroes were attending three white schools under this plan as of the end of the 1963-64 school year, and no white children were enrolled in the system's four Negro schools (R. 28-29, 50).

In the Answer, the Board referred to its 1957 plan, arguing its validity under *Brown* v. *Board of Education,* 349 U. S. 294 (R. 13), its efficiency in permitting desegregation

while promoting "harmonious and peaceful relationships between all pupils and patrons" of the School District (R. 14), and its necessity for solving "administrative problems of various natures" peculiar to the remaining segregated grades (R. 14-15).

Following a pre-trial conference in June 1964 at which the Board was ordered to prepare a revised desegregation plan eliminating the racial minority transfer provisions (R. 30), the Board in July 1964, filed a plan which maintained the grade-a-year pace (R. 31-35).[2]

During the 1964-65 school year, some 197 seventh and eighth grade pupils at the Negro Lincoln School were assigned to white junior high schools (R. 39) under the revised plan. Lincoln High School will serve only grades 10, 11, 12 beginning with the 1965-66 school year by which time grade-a-year desegregation would be in its ninth year (R. 39-40, 56). Petitioners objected to the Board's plan contending: (a) desegregation was not proceeding with all deliberate speed, (b) the plan would not benefit Patricia Rogers, then in the eleventh grade, (c) retention of the minority transfer provision is unconstitutional, (d) the

[2] On June 13, 1964, following the Supreme Court's decision in *Goss* v. *Board of Education*, 373 U. S. 683, the Board amended its Answer, summarizing the transfers granted under the minority racial transfer feature of their plan, and offering to eliminate this provision (R. 24-29). However, the revised plan provided a one year extension of the minority transfer plan at the elementary school level as to white pupils who otherwise would have been assigned to one of three Negro elementary schools (R. 53-58). The Board defended the extension by asserting that assigning 55 white pupils to the Howard Elementary School with 530 Negro pupils, 22 white pupils to Dunbar Elementary School with 60 Negro pupils, and 30 white pupils to Washington Elementary School with 70 Negro pupils would result in "an intense psychological impact" on the white pupils (R. 36-37, 59-63), would adversely affect the good racial relationships in the community, and would cause many white children to enter private schools.

Lincoln attendance area will be based solely on race, and (e) no provision is made for desegregation of teaching personnel (R. 41-42).

At the hearing in August 1964, the Board offered testimony in support of its revised plan, emphasizing that for the 1964-65 school year some 300 Negro pupils would be assigned to white schools (R. 64), but refused to explain exactly what administrative problems would prevent immediate desegregation of grades 9-12, and particularly what problems justified the Board's denial of applications for transfer filed by minor plaintiffs and a few other Negro high school students (R. 78-79).

Having ascertained from the Board Superintendent that only three Negroes had applied for transfer from the Lincoln High School, and since the Record was silent as to why such transfers had been denied, petitioners' attorney asked the Superintendent:

> "Q. So at most, roughly you would have three Negroes who would desire to transfer from the Negro high school to the white high school. Is that correct? A. That is all that has asked to as I remember.
>
> "Q. I would like for you to tell this Court now how three Negroes could disrupt or destroy your educational system. A. Judge, do I have to try to elaborate on that?
>
> The Court: No, I think that is a question for the Court. You have covered it. If you desire you can elaborate some on it, yes.
>
> "A. Your Honor, I prefer not to try to discuss it any further than I have.
>
> The Court: All right.

"Q. Then you refuse to answer the question? A. You haven't asked a question. You have asked an opinion.

"Q. You have been giving opinions here all morning. The attorneys asked you. A. I have already given you that opinion.

"Q. And you refuse to answer the question?

The Court: I am going to hold that he has sufficiently answered it."

Minor petitioner Patricia Rogers was not at all reticent in explaining why she wanted a transfer to the Northside High School.

"Q. I would like for you to tell His Honor in your own words just why you would like to attend the Northside High School. A. I would like to attend because today Negroes are competing not only against Negroes for job opportunities but also against whites, and I think with the integrated education I will have a lot better opportunity for these jobs than I would just going to a Negro high school."

In addition to desiring a desegregated education, minor petitioner Patricia Rogers informed the Board that she would like to study journalism, music and German. None of these courses are available at Lincoln (R. 112-13). All are offered at the two white high schools (R. 122). The Superintendent testified that petitioner's course requests were no basis for transfer because white students cannot transfer from one high school to the other to obtain wanted courses (R. 99, 100); but a review of the catalogue shows that most basic courses are offered at both white schools.[3]

[3] Southside High School is teaching only grades nine through eleven during the 1964-65 school year (R. 39), explaining why some Northside courses were not offered during that year.

In fact, the two white high schools are far larger and offer a wider and more varied choice of subjects than are provided Negroes at Lincoln High School (Pltfs' Exhs. 2, 3, R. 122-24). There are less than 200 Negroes at Lincoln's Senior High (R. 107), while Northside has 2,300 and Southside has 1,000 (R. 96). White high school students are provided with a 25 page printed "Course Catalogue" listing 142 courses in 12 subject matter areas and detailed information on grading, testing, college requirements, suggested programs and school policies and regulations (Pltfs' Exh. 2, R. 122). Negro students at Lincoln get a "Teachers and Students Handbook," consisting of one mimeographed page listing approximately 35 courses in three divisions (Pltfs' Exh. 3, R. 124).

While the Board maintains that it has desegregated grades one through eight under its plan, Negroes are attending only five of 27 white schools (R. 25-28, 126). All schools are still listed for administrative purposes as "White" and "Negro" (Pltfs' Exh. 8, R. 126). As attendance areas are now drawn, it appears that such official designation by race will remain substantially accurate in fact in the future, particularly at the elementary school level (R. 25-29).

In addition, the Board has taken no steps to integrate Negro and white teachers, although all teachers have met together for several years (R. 76). The Board objected to allegations of teacher segregation (R. 11, 84), contending petitioners lack standing to raise the teacher issue. The district court agreed, sustained objection (R. 85, 117), to petitioners' efforts to require assignment of teachers on a nonracial basis, and approved the Board's Revised Plan as submitted, *Rogers* v. *Paul*, 232 F. Supp. 833 (W. D.

Ark. 1964). Reviewing the plan in light of school decisions by the Supreme Court and various federal courts of appeal, the trial court concluded without further elaboration that the plan met the standards of the cases cited. Thus, while referring to the decision in *Goss* v. *Board of Education*, 373 U. S. 683, as the basis for its order of June 18, 1964, invalidating the minority transfer provision in the Board's plan, the lower court concluded from the number of pupils utilizing the provision: "It seems clear that the great majority of pupils, white and Negro, do not desire to attend an integrated school." 232 F. Supp. at 838. The court indicated no other reason for its approval of the extension of the provision for use by white elementary school children during the 1964-65 school year.

In dismissing petitioners' argument that the Board plan does not meet current standards for good faith and all deliberate speed, the court referred to those portions of *Brown* v. *Board of Education*, permitting time to solve administrative problems, but interpreted the Court's subsequent statements in *Watson* v. *City of Memphis*, 373 U. S. 526, as relevant only to desegregation in recreational facilities, 232 F. Supp. at 841. Because the court deemed the Board's desegregation efforts "diligent" and the plan "eminently successful and satisfactory," petitioners' motion for counsel fees (R. 119) was denied. The court then retained jurisdiction as to the teacher issue "if presented by proper parties," and dismissed the complaint. 232 F. Supp. at 844. The court entered judgment based on the above opinion on August 19, 1964 (R. 44), and petitioners filed notice of appeal on the same date (R. 45).

The Eighth Circuit affirmed the district court on May 7, 1965 (345 F. 2d 117), agreeing that the plan is satisfactory as to speed and completeness, and the Board's refusal to

immediately complete desegregation was justified by its fear such action "would needlessly thwart the good faith efforts of the Board to accomplish de jure desegregation in a peaceful and orderly manner." 345 F. 2d at 122.

The Eighth Circuit reviewed several cases from four circuits condemning grade-a-year desegregation plans, and distinguished them on the basis that they involved areas where school boards had failed to act in good faith. Unlike areas where there was hard core opposition to integration, the Court found that the transition in Fort Smith was smooth, without incident, and that the record presented impressive evidence that ". . . both races are satisfied with the revised plan." 345 F. 2d at 123.

The Court found that the record provided no basis for ordering the immediate admission of petitioner Patricia Rogers to the Northside High School because both the Negro and white schools are accredited and courses are provided at each school upon request of at least six students if a teacher can be found to teach it. Cases where individual petitioners were permitted to transfer to desegregated schools in order to obtain courses not otherwise available to them were distinguished as arising in districts where geographical school zoning had not been adopted. Since Patricia Rogers lives within three blocks of the Lincoln High School, the Court found that a transfer would constitute discriminatory action in her favor and would weaken the school system.

In regard to teacher desegregation, the Eighth Circuit interpreted the district court's action, not as requiring a teacher to raise the question, but as requiring that it be raised by a pupil then eligible to attend a desegregated school.

Reason for Granting the Writ

The approval by the courts below of a grade-a-year desegregation plan despite the absence of valid administrative problems justifying delay of complete desegregation for four more years, and the inability of petitioners and other Negro high school students to obtain an education in the Negro high school equal (in respects other than segregation per se) to that provided for white high school students, presents the question of this Court's "all deliberate speed" standard today.

The Fort Smith plan has condemned both original minor plaintiffs to complete their public school education in an inferior segregated school. Two additional Negro high school students, Vera Moore in the 10th grade and Karen Jones in the 11th grade, seek to join as petitioners in this Court, but because the Board's grade-a-year plan extends only to grade nine during the 1965-66 school year, these petitioners too will be denied the benefits of a high quality desegregated education, as will all other Negro pupils now in grades ten, eleven and twelve.

At a time when other courts of appeal are constricting the time in which Southern school boards must extend the desegregation process to all grades, the Eighth Circuit, by approving the Fort Smith plan, unduly prolongs the existence of a small, segregated and educationally inefficient Negro high school, and ironically, shackles petitioners and their class with a slower desegregation pace than would have been required by the United States Department of Health, Education and Welfare for Board compliance with the 1964 Civil Rights Act if judicial relief to desegregate the schools had not been sought.

The Department considers itself bound by court-approved plans. Moreover, to the extent that the Department follows the lead of the court, the Eighth Circuit has set a standard calculated to encourage slowness not speed. And apart from the effect on H. E. W. standards, this decision of course will be important for those districts that choose to forego federal funds. Only the courts can desegregate them.

This case also presents the issue of faculty desegregation, and whether a school board may delay it until pupil desegregation is completed or teachers themselves intervene seeking assignment on a non-racial basis.

Similar issues are presented in petitions for writs of certiorari filed in *Bradley* v. *The School Board of the City of Richmond, Va.*, No. 415 (Oct. Term, 1965), and *Gilliam* v. *School Board of the City of Hopewell, Va.*, No. 416 (Oct. Term, 1965).

1.

The Fort Smith Plan Unreasonably Delays Pupil Desegregation and Condemns Negro Children to Attend Inferior Schools.

A. The Court of Appeals has approved a pace of desegregation in conflict with standards established by this Court and the other circuits.

In several significant respects as set forth in the following paragraphs, the decision below conflicts with decisions of this Court in *Calhoun* v. *Latimer*, 377 U. S. 263; *Griffin* v. *School Board of Prince Edward County*, 377 U. S. 218; *Goss* v. *Board of Education of City of Knoxville*, 373 U. S. 683, and with the Third Circuit in *Evans* v. *Ennis*, 281 F. 2d 385 (3d Cir. 1960), the Fourth Circuit in *Jackson* v.

School Board of the City of Lynchburg, 321 F. 2d 230 (4th Cir. 1963), the Fifth Circuit in *Price* v. *Denison Independent School District,* —— F. 2d —— (5th Cir. No. 21632, July 2, 1965), and the Sixth Circuit in *Goss* v. *Board of Education of City of Knoxville,* 301 F. 2d 164 (6th Cir. 1962) and *Northcross* v. *Board of Education of City of Memphis,* 333 F. 2d 661 (6th Cir. 1964).

The basic error in the lower court decision is traceable to an interpretation of this Court's "all deliberate speed" standard placing emphasis on accommodation to opposition rather than whether change took place as speedily as bona fide administrative considerations would permit. The court of appeals approved the district court finding that the Board's plan had not upset the " . . . exceptionally harmonious and cooperating relationship between the races in Fort Smith, Arkansas" (345 F. 2d at 122). The Court found that unlike areas such as Prince Edward County, Virginia, where integration efforts met with hard core opposition,

> In Fort Smith the transition was smooth and without incident. There was no manifestation of bad feeling or violent opposition. The lack of any evidence to indicate any serious objection to the plan of desegregation is impressive. So far as this record is concerned, both races are satisfied with the revised plan. It has been accepted by the majority of pupils and parents as the best method of complying in good faith with the law (345 F. 2d at 123).

This Court's decisions, of course, leave no doubt that regardless of community opposition, compliance is required "at the earliest practicable date". *Brown* v. *Board of Education,* 349 U. S. 294; *Cooper* v. *Aaron,* 358 U. S. 1. Reviewing the intransigence of Prince Edward County, this Court

nevertheless concluded: "The time for mere 'deliberate speed' has run out, . . . " *Griffin* v. *School Board of Prince Edward County,* 377 U. S. 218, 234. And as for the maintenance of existing and commendable good-will between the races, this Court observed in *Watson* v. *City of Memphis,* 373 U. S. 526, 537, that such conditions "can best be preserved and extended by the observance and protection, not the denial, of the basic constitutional rights here asserted."

But despite these decisions and the more stringent limitations on delay imposed in *Goss* v. *Board of Education,* 373 U. S. 683, and *Calhoun* v. *Latimer,* 377 U. S. 263, the court below, based on testimony that white pupils would suffer "an intense psychological impact" (R. 37) if required to attend Negro schools, approved both the grade-a-year pace and an extension of a minority transfer provision similar to one invalidated in *Goss* v. *Board of Education, supra.* In the Superintendent's view:

> Anything of this nature, that is as big a shock as this would be, in my opinion, to the children, and their parents, the discussions that would take place on the phones, would affect the whole community. It would affect the working relationship, in my opinion, of the staff, the School Board, the patrons, and would only result in difficulty for the smooth operation of the whole school system, not just the schools involved" (R. 63).[4]

The Superintendent testified that the Board was grappling with problems related to: "school population growth and inadequacy of buildings and other facilities", "mass shifting within the District of school population from the

[4] But compare with Record at 71-73, 113.

older sections of Fort Smith to new suburban areas", a huge building program; and "the transition of all schools into a 6-3-3 system (R. 53-58). The Eighth Circuit considered this testimony as evidence that such administrative problems precluded acceleration of the plan's grade-a-year speed. But there was no testimony as to how these factors related to the time required for school desegregation, or more specifically, how they would complicate or prevent immediate desegregation of the Fort Smith high schools (see R. 56-57).

The lower court's second basic error is in the misplaced importance and distorted effect given to findings concerning the Board's good faith progress under the plan. It need hardly be repeated that school officials may not assert good faith as a legal excuse for delay. *Cooper* v. *Aaron, supra,* at 15. Only recently the Fifth Circuit in requiring rapid acceleration of a grade-a-year plan initiated prior to the filing of a law suit, observed that a school board's good faith desire to do what the law requires is significant:

> But in the final analysis it has limited bearing on the substantive rights accorded and specifically the speed of the plan. The rights of Negro children come from the Constitution, not the attitude, good or bad, of school administrators. *Price* v. *Denison Independent School District,* —— F. 2d —— (5th Cir. No. 21632, July 2, 1965).

The Eighth Circuit had seemed to adopt a similar view in *Dove* v. *Parham,* 282 F. 2d 256, 261 (8th Cir. 1960) where good faith was measured objectively by "required action" not "state of mind." Accord, *Norwood* v. *Tucker,* 287 F. 2d 798, 804 (8th Cir. 1961). And it was the Eighth Circuit which seven years ago stood firm in the face of determined resistance by state and local governments to desegregation efforts in Little Rock. *Aaron* v. *Cooper,* 257 F. 2d 33, 40

(8th Cir. 1958), affd. *Cooper* v. *Aaron,* 358 U. S. 1. See also *Brewer* v. *Hoxie School District No. 46,* 238 F. 2d 91 (8th Cir. 1956).

Clearly, the Eighth Circuit's departure from standards set by this Court and followed by the other courts of appeal which have rejected grade-a-year plans may not be concealed by the claim that such cases involve " . . . situations where the school boards had either failed to act in good faith or after inordinate delays had proposed a plan which was too slow and unduly protracted the process of desegregation" 345 F. 2d at 122. For example, the Fifth Circuit in the *Price* case *supra,* accelerated a grade-a-year plan produced in good faith and without inordinate delay. On the other hand, here the Board's plan was initiated in 1957, but its rate of progress until, at least, this suit was filed could accurately be described as "slow and unduly protracted."

As indicated above, no specific reasons were provided why three years will be required to desegregate the one Negro high school, Lincoln, with only about 200 students in grades ten to twelve (R. 107). Nor was there an explanation why school budgets and records continue to be maintained on a racial basis (R. 126), or indeed why the Board refuses, short of a suit by a teacher, to desegregate its teacher hiring and assignment procedures (R. 11, 84). But whatever the reasons, the Eighth Circuit's position, clearly contrary to the decisions of this Court and the other courts of appeal, perpetuates the denial of constitutional rights to petitioner and her class resulting in sacrifices far more severe than envisioned as necessary in the "all deliberate speed" standard.

B. In view of the grossly inferior education it provides, the Lincoln School should have been desegregated immediately.

The Eighth Circuit stands alone in its willingness to delay desegregation when such delay condemns petitioner and all other Negro high school students to attend the undeniably inferior Lincoln High School. The court below points to Lincoln's accredited status as proof of equality without mentioning that such accreditation is based on a separate philosophy designed to meet opportunities that may be available to Negro graduates (R. 89-90). Accreditation however, connotes merely that the school meets the minimum standards of the accrediting agency, and cannot obscure the fact that the Lincoln School's curriculum is woefully lacking when compared to that provided students attending the white high schools.

Petitioner Patricia Rogers' expressed belief that an integrated education would better prepare her for job opportunities (R. 112) carries more than sociological and psychological implications when applied to Fort Smith's high school facilities. Patricia Rogers specifically supplemented her desire for a desegregated education, by requesting instruction in journalism, music, and German (R. 112), none of which are available at Lincoln High (R. 124). White students attending Northside High School can enroll in Journalism I, II, III, and IV, as well as 10 different English courses (4 are offered at Lincoln). In music, white students are offered Music Theory, three band and four choral classes while Negroes may take "Band" or "Glee Club" in lieu of physical education. Four years of German are available at Northside as well as four years of Latin, French and Spanish. Negroes are offered two years of French.

Beyond the subjects in which Patricia Rogers was specifically interested, a plethora of courses designed to prepare students for meaningful participation in today's world are offered in the white high schools. The courses, illustratively listed in a 25 page printed handbook, include and range from family living, driver education, library science, mechanical and architectural drawing, trade printing, metal work, home management, accounting, office machines to college preparatory chemistry, physics, algebra and mathematics. These are but a few of the more than 140 courses offered in the white high schools in twelve subject matter areas. Negro students at Lincoln High School are offered none of these courses, and must select in their one page mimeographed "handbook" from about 35 course offerings in three subject matter areas.[5]

Based solely on a summary comparison of the offerings at the two high school systems, it is obvious that sound scholastic and constitutional basis exist under *Brown* v. *Board of Education, supra,* and probably even the rejected "separate but equal" standard of *Plessy* v. *Ferguson,* 163

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[5] The lower court's quotation of figures shows that per pupil costs for Negro high school pupils are higher than those for white students. This points up the difficulty of maintaining a first class high school with only 200 students, far below the number experts consider feasible for an efficient and effective high school. Thus, Dr. James B. Conant has written:

> The enrollment of many American public high schools is too small to allow a diversified curriculum except at exorbitant expenses. . . . The prevalence of such high schools—those with graduating classes of less than one hundred students—constitutes one of the serious obstacles to good secondary education throughout most of the United States. I believe such schools are not in a position to provide a satisfactory education for any group of their students—the academically talented, the vocationally oriented, or the slow reader. The instructional program is neither sufficiently broad nor sufficiently challenging. A small high school cannot by its very

U. S. 537 for requiring the immediate desegregation of grades ten thorugh twelve at the Lincoln School.

Indeed, even prior to the decision in *Brown* v. *Board of Education*, this Court in *Missouri ex. rel. Gaines* v. *Canada*, 305 U. S. 337; *Sipuel* v. *Oklahoma*, 332 U. S. 631, and *Sweatt* v. *Painter*, 339 U. S. 629, held that disparity in educational facilities required immediate desegregation.[5] Moreover, at the elementary and high school level, the Supreme Court of Delaware in *Gebhart* v. *Belton*, 91 A. 2d 137 (Del. 1952), held that measurable disparity in facilities requires immediate integration.[6]

Following *Brown*, a number of federal courts have required immediate school desegregation on a finding of inequality of facilities. Recently, the Fifth Circuit acting on a motion for an injunction pending appeal, required the immediate admission of a Negro student to summer sessions at a white school in order to obtain Algebra courses not available at the Negro school. Relief was granted notwithstanding that the appellant was not eligible to attend a desegregated grade. *Acree* v. *County Board of Education of Richmond County, Georgia*, —— F. 2d —— (5th Cir., No. 22,723, June 30, 1965). See also, *Gaines* v. *Dougherty County Board of Education*, 329 F. 2d 823 (5th Cir. 1964).

The Sixth Circuit in approving a stair-step school desegregation plan has denied specific relief to named plaintiffs who were not eligible for transfer under the plan, *Goss*

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nature offer a comprehensive curriculum. Furthermore, such a school uses uneconomically the time and efforts of administrators, teachers, and specialists, the shortage of whom is a serious national problem. Conant, James B., *The American High School Today*, pp. 37, 77, McGraw-Hill, New York (1959).

[6] Affirmed *sub nom.*, *Brown* v. *Board of Education*, 347 U. S. 483.

v. *Board of Education of Knoxville*, 301 F. 2d 164, 168 (6th Cir. 1962), but granted relief where a Negro student sought a commercial art course not available in Negro schools. *Goss* v. *Board of Education of Knoxville*, 305 F. 2d 523 (6th Cir. 1962).

For similar reasons, courts in the Fourth Circuit both prior and after *Brown* have required the immediate desegregation of public schools where Negro pupils were required to leave the school district to attend school, *Buckner* v. *County School Board of Greene County*, 332 F. 2d 452 (4th Cir. 1964); *Goins* v. *County School Board of Grayson County*, 186 F. Supp. 753 (W. D. Va., 1960), stay denied 282 F. 2d 343 (4th Cir. 1960); *School Board of Warren County* v. *Kilby*, 259 F. 2d 497 (4th Cir. 1958); *Corbin* v. *County School Board of Pulaski County*, 177 F. 2d 924, 927 (4th Cir. 1949); *Griffith* v. *Board of Education of Yancey County*, 186 F. Supp. 511 (W. D. N. C., 1960); *Walker* v. *County School Board of Floyd County, Va.* (W. D. Va., 1960, C. A. No. 1012), 5 Race Rel. L. Rep. 714; *Crisp* v. *County School Board of Pulaski County, Va.* (W. D. Va., 1960, No. 1052), 5 Race Rel. L. Rep. 721.

Thus, even assuming the presence of valid factors mitigating against the immediate desegregation of grades ten through twelve, it appears that only the Eighth Circuit would refuse Negro students the right to immediate admission to white schools to obtain courses not available at Lincoln High. Petitioners' right to such admission is in no way diminished by the Superintendent's offer to provide any course at any high school "if there are as many as six students that want the course and we can find a teacher to teach it" (R. 89).[7] As this Court indicated in *Missouri ex*

[7] While teacher segregation will be discussed below, its continued presence in the Fort Smith system adversely affects the likelihood

rel. Gaines v. *Canada*, 305 U. S. 337, 351, constitutional rights cannot be made to depend upon the number of persons who may be discriminated against.

C. The lower court's decision frustrates enforcement of school desegregation as required by the Civil Rights Act of 1964.

The Civil Rights Act of 1964 represents a Congressional effort to implement this Court's decision in the *Brown* case, by forbidding in Title VI of its provisions the disbursement of federal funds to facilities (including schools) which discriminate on the basis of race or color.[8] Acting pursuant to the authority of Title VI, the United States Department of Health, Education and Welfare (H. E. W.) and its Office of Education has prepared standards for school boards seeking to desegregate their systems.[9] Under the standards contained in its "General Policy Statement," school boards making the transition from biracial to desegregated systems must as a minimum for the 1965-66 school year, take several affirmative steps including desegregation of all grades if possible, but no less than four grades, including "the first and last high school grades," desegregate all grades by the 1967-68 school year, permit any pupil assigned to a segregated school to transfer, irrespective of whether the grade he is attending has been desegregated, " . . . to take a course of study for which he is qualified and

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that the superintendent will be able to fulfill his offer at the Lincoln High School.

[8] 42 U. S. C. §2000d.

[9] General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools, HEW, Office of Education, April 1964. The document, hereinafter cited as "H. E. W. Guidelines" is reprinted in the appendix to *Price* v. *Denison Independent School District*, —— F. 2d —— (5th Cir. No. 21632, July 2, 1965), and in Southern School News, May 1965, pp. 8-9.

which is not available in the school he is attending;" (H. E. W. Guidelines, V, E 1, 4).[10]

Unfortunately for petitioners and their class, the regulations under which Title VI of the Civil Rights Act of 1964 are administered,[11] and the H. E. W. Guidelines based on these regulations, *supra*, provide that school boards are eligible for financial assistance if they are subject to a final court order of desegregation. As presently interpreted, this provision applies even though the court order provides for more limited desegregation than the H. E. W. Guidelines. Thus, approval by the court below of the Board's grade-a-year plan, enables the Board to continue receiving federal funds and places petitioners in a position worse than if this suit had not been filed.[12] The order of the court below was accepted as the Fort Smith plan by the Office of Education on July 19, 1965.

Precisely to avoid such paradoxical results, the Fifth Circuit, recognizing the United States Office of Education as better qualified and "the more appropriate federal body to

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[10] As of August 24, 1965, the Office of Education reported that they have accepted desegregation plans from 113 Arkansas school boards, 68 of which provide for desegregation in all 12 grades in the Fall of 1965. Ten school boards will desegregate all 12 grades by the Fall of 1966 and 35 will complete desegregation in 1967. An additional 80 Arkansas Boards have submitted plans which are pending approval in the Office of Education.

[11] 45A C. F. R. §80(c) (December 4, 1964).

[12] Unhappily, petitioners are not alone. District courts in the Eighth Circuit have recently approved desegregation plans in El Dorado, Arkansas, *Kemp* v. *Beasley*, Civ. No. 4-65-C-8 (E. D. Ark.), and West Memphis, Arkansas, *Yarbrough* v. *Hulbert-West Memphis Sch. District No. 4* Civ. No. 1048 (W. D. Ark.), both of which plans limit desegregation to two grades in 1965 and in a variety of other respects, fall short of meeting the minimum standards contained in the H. E. W. Guidelines. The Office of Education reports that both court orders have been accepted, assuring the continued flow of federal funds to these school districts.

weigh administrative difficulties inherent in school desegregation plans," rejected a grade-a-year plan in *Singleton* v. *Jackson Municipal Separate School District*, —— F. 2d —— (5th Cir., No. 22527, June 22, 1965), and by injunction pending appeal ordered the district court to conform the plan to the minimum standards fixed by the United States Office of Education. This policy, the court said, was intended to prevent school boards from using federal courts as a means of circumventing requirements for financial aid.[13] "If judicial standards are lower," predicted the Fifth Circuit in *Singleton, supra*, "recalcitrant school boards in effect will receive a premium for recalcitrance; the more the intransigence, the bigger the bonus."

The restricting effect the lower court's decision has had on school desegregation thus not only denies petitioners' constitutional rights, but also creates standards which handicap uniform enforcement of Title VI of the 1964 Civil Rights Act. It now appears that many Boards will waive all federal aid rather than comply with the Civil Rights Act (see N. Y. Times, Aug. 29, 1965, p. 52, Aug. 31, 1965, pp. 1, 42). The lower court's decision encourages such recalcitrant systems to maintain segregation until suits are filed and the more lenient judicial standards are invoked.

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[13] The Fifth Circuit has followed its decision in the *Singleton* case in *Price* v. *Denison Independent School District, supra*, and by injunction pending appeal in *United States* v. *Jefferson County Board of Education*, —— F. 2d —— (5th Cir. No. 22864, Aug. 17, 1965); *United States* v. *City of Bessemer Board of Education*, —— F. 2d —— (5th Cir. No. 22862, Aug. 17, 1965); *United States* v. *Bossier Parish School Board*, —— F. 2d —— (5th Cir. No. 22863, Aug. 17, 1965); and *Valley* v. *Rapides Parish School Board*, —— F. 2d —— (5th Cir. No. 22832, Aug. 19, 1965).

2.

Petitioners' Constitutional Right to a Desegregated Education Includes, of Necessity, Instruction by Teachers Assigned Without Regard to Race.

During the decade since *Brown* v. *Board of Education,* 347 U. S. 483, 349 U. S. 294, the principles established in those cases have been interpreted to prohibit all racial discrimination by states.[14] Petitioners submit it is time to direct immediate implementation of their right to attend schools where teachers and other faculty personnel are assigned on a non-racial basis. Such relief is closely linked to the requirement under *Brown* v. *Board of Education,* 349 U. S. 294, to have the district courts supervise the effectuation of "a racially nondiscriminatory *school system*" (349 U. S. at 301, emphasis added). The Court in deciding the second *Brown* case, *supra,* pointed to administrative problems related to "the physical condition of the school plant, the school transportation system, *personnel,* revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations . . . ", as matters to be considered in appraising the time necessary for good faith compliance (emphasis added). We believe that the Court plainly regarded the

[14] *Griffin* v. *School Board of Prince Edward County,* 377 U. S. 218 (schools); *Peterson* v. *Greenville,* 373 U. S. 244 (restaurant); *Johnson* v. *Virginia,* 373 U. S. 61 (courtroom); *Colorado Anti-Discrimination Commission* v. *Continental Air Lines,* 372 U. S. 714, 721 (employment); *Turner* v. *Memphis,* 369 U. S. 350 (airport restaurant); *Bailey* v. *Patterson,* 369 U. S. 31 (transportation); *Browder* v. *Gayle,* 352 U. S. 903 (buses); *Holmes* v. *Atlanta,* 350 U. S. 879 (municipal golf courses); *Dawson* v. *Baltimore City,* 350 U. S. 877 (municipal beaches).

task as one of ending *all* discrimination in school systems, including "personnel" as well as discrimination in the transportation system, attendance districts or the other factors mentioned. The delay countenanced by the "deliberate speed" doctrine was predicated on the assumption that dual school systems would be reorganized.

The brief of the United States, as *amicus curiae,* in *Calhoun* v. *Latimer,* 377 U. S. 263, argued in this Court that:

> Obviously, a public school system cannot be truly nondiscriminatory if the school board assigns school personnel on the basis of race. Full desegregation can never be achieved if certain schools continue to have all-Negro faculties while others have all-white faculties. Schools will continue to be known as "white schools" or "Negro schools" depending on the racial composition of their faculties. It follows that the school authorities must take steps to eliminate segregation of personnel as well as pupils. (Brief of the United States, pp. 39-40.)

The judgment in *Calhoun* was vacated without discussion of this issue, but in addition to the statements in *Brown* quoted above, this Court earlier had condemned state-imposed racial restrictions which produced inequalities in the training of a teacher. *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637. There, the Court found that racial restrictions would impair and inhibit the learning of a student seeking a graduate degree in education, and that the adverse affect on his education, would in turn be reflected in the education and development of those he taught 339 U. S. at 641. What is obviously true of the graduate

student in education cannot be less so when applied to students at the elementary and high school level.

The lower court's ruling that petitioners lack standing to question the Board's policy of assigning teaching personnel on a segregated basis as effectively preserves the traditional characterization of Fort Smith's schools as "white" or "colored", as racial signs over the doors. The ruling, moreover, is contrary to rulings on the standing issue in the Fourth, Fifth and Sixth Circuits,[15] each of which courts has read the attack on teacher segregation:

> " . . . as a claim that continued assigning of teaching personnel on a racial basis impairs the students' right to an education free from any consideration of race." *Mapp* v. *Board of Education of Chattanooga,* 319 F. 2d at 576.

The record, moreover, simply does not support the Eighth Circuit's conclusion (345 F. 2d at 125) that the district court refused to consider teacher desegregation because petitioners were not attending grades being desegregated.

The Board moved to strike petitioners' allegations regarding teacher segregation from the complaint (R. 6), contending such facts " . . . are insufficient to state a claim upon which plaintiffs are entitled to or can be granted any relief . . ." (R. 11). And at the hearing, when peti-

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[15] *Griffin* v. *County School Board of Prince Edward County,* 339 F. 2d 486 (4th Cir. 1964); *Jackson* v. *School Board of City of Lynchburg,* 321 F. 2d 230 (4th Cir. 1963); *Board of Public Instruction of Duval County* v. *Braxton,* 326 F. 2d 616, 620 (5th Cir. 1964); *Augustus* v. *Board of Public Instruction,* 306 F. 2d 862, 869 (5th Cir. 1962); *Northcross* v. *Board of Education of City of Memphis,* 333 F. 2d 661 (6th Cir. 1964); *Mapp* v. *Board of Education of Chattanooga,* 319 F. 2d 571 (6th Cir. 1963).

tioners' attorney attempted to question the Superintendent with reference to desegregation of teachers and administrative personnel, the Board's attorney objected, stating: " . . . . we do not conceive that to be an issue before the Court in this case. *No teachers are parties.*" (R. 84). (Emphasis added.)

The district court sustained objection, and during a subsequent colloquy with counsel explained that jurisdiction would be retained so that if there was " . . . a bona fide effort on the part of interested parties, particularly the teachers for assignment, . . . then they could simply intervene here . . . " (R. 118). Plaintiffs' counsel sought clarification as to whether it was the court's position that petitioners lacked sufficient interest to raise the question of faculty desegregation, and the court responded, "That is, in effect, the ruling of the Court . . . " (R. 118). Thus, the district court's opinion accurately summarizes its position:

> " . . . the court sustained an objection to the introduction of evidence by plaintiffs on the question of assignment of teachers, but in order to avoid a multiplicity of suits, the Court will retain jurisdiction of the case in order that the question may be raised if any proper party desires to *intervene.*" 232 Fed. Supp. at 843. (Emphasis added.)

Clearly, the district court contemplated that parties not then before the Court must "intervene" to question teacher segregation, which language refutes the Eighth Circuit's interpretation that petitioners may raise the teacher desegregation issue when they become eligible to enter desegregated grades. Even if its reading of the dis-

trict court's intention had been accurate, however, such a view would place unjustified restrictions on the right to relief of petitioners who seek for themselves, and all other Negro pupils in the system, not just desegregated assignments, but a desegregated school system. See *Bailey* v. *Patterson,* 369 U. S. 31, 33. *Potts* v. *Flax,* 313 F. 2d 284, 288-89 (5th Cir. 1963).

Approval of the Board's plan by the court below without requiring teacher desegregation further disadvantages petitioners for having sought relief in the courts. School systems required to desegregate in accordance with the standards contained in the H. E. W. guidelines, must take positive steps to eliminate faculty as well as pupil segregation.[16]

Obviously, the Fort Smith system cannot be desegregated as long as the faculty at each school is assigned on the basis of race. Just as obviously, the careers of Negro teachers in the South, particularly in Arkansas, are too tenuous to reasonably expect their participation in school desegregation suits.[17]

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[16] The H. E. W. Guidelines provide in Par. V B:

1. *Faculty and staff desegregation.* All desegregation plans shall provide for the desegregation of faculty and staff in accordance with the following requirements:

a. *Initial assignments.* The race, color, or national origin of pupils shall not be a factor in the assignment to a particular school or class within a school of teachers, administrators or other employees who serve pupils.

b. *Segregation resulting from prior discriminatory assignments.* Steps shall also be taken toward the elimination of segregation of teaching and staff personnel in the school resulting from prior assignments based on race, color, or national origin (see also, V. E. 4(b)).

[17] *Shelton* v. *Tucker,* 364 U. S. 479; *Bates* v. *Little Rock,* 361 U. S. 516; *United States* v. *Board of Education of Greene County,* 332 F. 2d 40 (5th Cir. 1964); *Brooks* v. *School District of Moberly,*

The number of Negro teachers in Fort Smith schools is ot large. Their assignment on a nonracial basis along ith white teachers in the system will hardly constitute a ajor administrative problem, and may substantially re- eve the "intense psychological impact" the Board fears ill result from assigning white children to Negro schools R. 36-37, 59-63). Indeed, it is significant that the Board's ar of psychological trauma was voiced only when white upils were to be assigned to school with all Negro faculties.

The significance of the decisions on teacher desegrega- on and their effects on society should not be ignored. In 64-65 Arkansas public schools employed 13,205 white achers and 3,545 Negro teachers.[18] Complete teacher gregation is maintained, except in Little Rock where, the fall of 1964, a Negro was named Supervisor of ementary Education. A similar situation exists in most uthern states. It is estimated that there are 419,199 ite teachers and 116,028 Negro teachers in 11 southern tes, six border states (excluding Maryland) and the strict of Columbia.[19] There was no faculty desegregation Alabama, Georgia, Louisiana, Mississippi and South rolina. One North Carolina district, two Florida dis- cts, and seven Tennessee districts had some faculty de- gregation.[20]

., 267 F. 2d 733 (8th Cir. 1959); *Henry* v. *Coahoma County*, ss. *Board of Education*, 8 Race Rel. L. Rep. 1480 (N. D. Miss. 3); *Goode* v. *Board of Education of Summers County*, 8 Race . L. Rep. 1485 (S. D. W. Va. 1963); *Bryan* v. *Austin*, 148 F. pp. 563, 567 (E. D. S. C. 1957); judgment vacated 354 U. S. 933.

[18] Southern Education Reporting Service, "Statistical Summary School Segregation-Desegregation in the Southern and Border tes", 14th Rev., Nov. 1964, p. 8.

[19] *Id.* at p. 2.

[20] *Id.* at pp. 2, 15, 39, 50.

Within the Negro community, Negro teachers generally are recognized as having a leadership role with a comparatively high economic position[21] but their potential as leaders in efforts to promote desegregation of public facilities and schools is limited.[22] Continued faculty segregation, posing the danger of discharge of Negro teachers as Negro pupils go to white schools where no Negro teachers are assigned threatens potentially disastrous social consequences for one of the most important social and economic groups in Negro communities in the South.

Increasingly, district courts are reaching the conclusion that faculty desegregation is not only necessary to effectuate the mandate of *Brown,* but that delaying the process until pupil desegregation is complete increases to the point of impossibility the difficulty of completely disestablishing segregation in the system.[23] But the courts of appeal, while apparently willing to affirm district court orders requiring faculty desegregation,[24] have hesitated to require immediate implementation of perhaps the most vital part of the school desegregation process, and in case after case, sus-

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[21] According to the 1960 census the median income for the non-white family was $3,662, but the median for the non-white family whose head was employed as an elementary or secondary teacher was $6,409 (1960 Census of Population, Vol. I, "Characteristics of the Population," Part I, U. S. Summary, Table 230, pp. 1-611).

[22] Lamanna, Richard A., "The Negro Teacher and Desegregation", *Sociological Inquiry,* Vol. 35, No. 1, Winter 1965.

[23] See *Christmas* v. *Board of Education of Harford County,* 231 F. Supp. 331 (D. Md. 1964); *Dowell* v. *School Board of Oklahoma City,* 219 F. Supp. 427 (N. D. Okla. 1963); *Board of Public Instruction of Duval County* v. *Braxton,* 326 F. 2d 616, 620 (5th Cir. 1964).

[24] *Board of Public Instruction of Duval County* v. *Braxton, supra.*

tain lower court rulings delaying teacher integration.[25] Its construction of the district court's ruling on teachers aside, the Eighth Circuit's decision here has the same effect as the rulings in the other courts of appeal, i.e., the delay of teacher desegregation until pupil desegregation is substantially complete.

Such delay has been criticized in a dissent to the Fourth Circuit's ruling postponing consideration of the teacher segregation issue in *Bradley* v. *School Board of Richmond, Va.*, 345 F. 2d 310, 324 (4th Cir. 1965) by Judges Sobeloff and Bell in terms appropriate to this case:

> The composition of the faculty as well as the composition of its student body determines the character of a school. Indeed, as long as there is a strict separation of the races in faculties, schools will remain "white" and "Negro" making student desegregation more difficult. . . . The question of faculty desegregation was squarely raised in the District Court and should be heard. It should not remain in limbo indefinitely. After a hearing there is a limited discretion as to when and how to enforce the plaintiffs' rights in respect to this, as there is in respect to other issues,

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[25] *Wheeler* v. *Durham City Board of Education*, —— F. 2d —— (4th Cir. No. 9630, June 1, 1965); *Gilliam* v. *School Board of City of Hopewell*, 345 F. 2d 325 (4th Cir. 1965); *Bradley* v. *School Board of Richmond, Va.*, 345 F. 2d 310 (4th Cir. 1965); *Bowditch* v. *Buncombe County Board of Ed.*, 345 F. 2d 329, 332, 333 (4th Cir. 1965); *Griffin* v. *Board of Supervisors*, 339 F. 2d 486, 493 (4th Cir. 1964); *Jackson* v. *School Board of the City of Lynchburg*, 321 F. 2d 230, 233 (4th Cir. 1963); *Price* v. *Denison Independent School District*, —— F. 2d —— (5th Cir. No. 21632, July 2, 1965); *Lockett* v. *Board of Education of Muscogee County Sch. Dist., Ga.*, 342 F. 2d 225, 229 (5th Cir. 1965); *Bivins* v. *Board of Public Education and Orphanage for Bibb County, Ga.*, 342 F. 2d 229, 232 (5th Cir. 1965); *Calhoun* v. *Latimer*, 321 F. 2d 302, 311 (5th Cir. 1963); *Northcross* v. *Board of Education of City of Memphis*, 333 F. 2d 661, 666-67 (6th Cir. 1964); *Mapp* v. *Board of Education of Chattanooga*, 319 F. 2d 571 (6th Cir. 1963).

since administrative considerations are involved; but the matter should be inquired into promptly. There is no legal reason why desegregation of faculties and student bodies may not proceed simultaneously.

The views expressed by Judges Sobeloff and Bell, petitioners submit, are constitutionally and practically correct. A policy of assigning teachers to schools on the basis of the race of the pupils is plainly invidious even without regard to its effect on what schools various pupils attend. Pupils admitted to public schools are entitled to be treated alike without racial differentiations in those schools. *McLaurin* v. *Oklahoma State Regents, supra.* The student's relationship with teachers is central to the educational experience in public schools. When a state decrees that those Negro pupils in all-Negro schools be taught only by Negro teachers and that those Negro pupils in schools with white children be taught only by white teachers, it significantly perpetuates the segregation of Negro Americans in their educational experience. This is contrary to the egalitarian principle of the Fourteenth Amendment and the teaching of *Brown* that segregated education is "inherently unequal."

The issues presented by the grade-a-year plan and the faculty segregation issue merge into a common problem of vital importance to the implementation of the *Brown* decision, and deserve review by this Court.

CONCLUSION

Wherefore, for the foregoing reasons it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

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MOTION FOR LEAVE TO ADD PARTY PLAINTIFFS

Petitioners, pursuant to the provisions of Rule 21, Federal Rules of Civil Procedure, move the Court for leave to add as party plaintiffs in the subject case Vera Moore, minor, by her mother and next friend, Mrs. Ellsworth Winton, and Karen Jones, minor, by her mother and next friend, Mrs. Beatrice C. McCain, and in support of said motion show the Court:

1. Each of the parties who join in this motion to be added as plaintiffs in this case are Negroes and are residents of Fort Smith, Arkansas. Vera Moore is eligible to enter the 10th grade in the Fort Smith public schools and has been assigned to the Negro Lincoln High School. Karen Jones is eligible to enter the 11th grade in the Fort Smith public schools and has been assigned to the Lincoln High School.

2. This action was filed in September 1963 to desegregate the public schools in Fort Smith, Arkansas, by Mrs. Corine Rogers on behalf of her two minor daughters, Janice and Patricia Rogers, both of whom were then assigned to the Lincoln High School. The suit sought relief for both the named plaintiffs and for all other persons similarly situated. The parties seeking to be added as plaintiffs are members of the class upon whose behalf relief was sought in the subject case.

3. The proposed minor party plaintiffs in this action could have been original proper party plaintiffs, having been enrolled in the Fort Smith public schools and suffer-

ing from the racial segregation existing in the school system at the time this action was filed.

4. Moreover, the parties seeking to be added as party plaintiffs seek relief requiring the complete desegregation of the Fort Smith schools and their immediate admission to the white Northside High School for all the reasons originally stated by petitioners.

5. During the period since this suit was filed, one of the original minor plaintiffs, Janice Rogers, has graduated from the Lincoln High School and is thus no longer enrolled in the Fort Smith public school system. The other minor plaintiff, Patricia Rogers, will enter the 12th grade at the Lincoln High School in September 1965, and may graduate before all the relief sought in the complaint can be obtained and the issues raised by this litigation finally settled.

6. Petitioners, thus seek to add additional party plaintiffs so as to insure complete and effective disposition of all issues raised in this case and avoid any possibility that the class will not be adequately represented.

7. Granting petitioners' motion will make members of the represented class real parties in interest, and will not result in embarrassment or unfair handicap to the defendants. *Mullaney* v. *Anderson,* 342 U. S. 415.

WHEREFORE, for all the foregoing reasons, petitioners move the Court for leave to add as party plaintiffs in the subject case Vera Moore, minor, by her mother and next friend, Mrs. Ellsworth Winton, and Karen Jones, minor, by her mother and next friend, Mrs. Beatrice C. McCain.

Respectfully submitted,

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APPENDIX

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APPENDIX

[833]

Opinion Dated August 19, 1964

UNITED STATES DISTRICT COURT

W. D. ARKANSAS, FORT SMITH DIVISION

No. 1741

JANICE ROGERS, a Minor, age 16, PATRICIA ROGERS, a Minor, age 15, by Their Mother and Next Friend, MRS. CORINE ROGERS,

Plaintiffs,

—v.—

DR. EDGAR F. PAUL, DR. ROGER BOST, JOHN M. YANTIS, BRUCE SHAW, JACK GROBER, DOUGLAS G. ROGERS, Board of Directors of Special School District of Fort Smith, Arkansas, CHRIS CORBIN, Superintendent of Schools of Special School District of Fort Smith, Arkansas, SPECIAL SCHOOL DISTRICT OF FORT SMITH, ARKANSAS, a Corporation,

Defendants.

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232 F. Supp. 833

George Howard, Jr., Pine Bluff, Ark., for plaintiffs.

Daily & Woods, Shaw, Jones & Shaw, Fort Smith, Ark., for defendants.

JOHN E. MILLER, Chief Judge.

On September 12, 1963, plaintiffs filed their complaint against the Directors and the Superintendent of the Special School District of Fort Smith, Arkansas, and against

the District, in which they alleged that the defendants, and each of them, while acting in their official capacities have denied in the past, are now, and threaten to continue to deny to minor plaintiffs and the members of the class of persons that they represent, their rights, privileges and immunities as citizens of the United States and the State of Arkansas by engaging in the following:

"A. By maintaining and operating segregated public high schools within the Special School District of Fort Smith, Arkansas for minor plaintiffs and the members of the class of persons that they represent and assigning minor plaintiffs and the members of the class of persons that they represent to segregated public high schools in said district because of their race and color contrary and in violation of the equal protection and due process clauses of the Fourteenth Amendment to the federal Constitution; and,

"B. By maintaining and operating a dual scheme of attendance areas based solely on race with the assignment of high school pupils to schools in the district on the basis of their attendance areas in which they live, except that Negro high school pupils who do not reside in the Negro attendance area are required to attend the high school in the Negro attendance area, and the white high school pupils residing in [834] the Negro attendance are required to attend high school in a white attendance area, all of which violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution; and,

Opinion Dated August 19, 1964

"C. By maintaining and approving of budgets making available funds, school construction programs and curricula designed to perpetuate and maintain compulsory racially segregated schools, all of which violate the Fourteenth Amendment to the Constitution of the United States; and,

"D. By the assignment of teachers, principals and other administrative personnel to the various high schools within the Special School District of Fort Smith, Arkansas on the basis of their race and color and on the basis of the race and color of the pupils, all of which is being done to the detriment of the plaintiffs and the members of the class of persons they represent and in violation of the Fourteenth Amendment to the Constitution of the United States."

That after conferring with defendants in an effort to persuade them to cease and discontinue the alleged unlawful and discriminatory practices, the minor plaintiffs tried to enroll at one of the white high schools in the District but were refused admission; that in June 1963 the plaintiffs invoked rights under the Arkansas Pupil Assignment Law by filing a written request for transfer from the all-Negro high school to the Northside white high school and requested a hearing before the Board; that "defendants have refused to enroll or admit minor plaintiffs to the Northside white school because of their race and color, contrary to and in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States."

That the minor plaintiffs, and each of them, and the members of the class of persons that they represent, have been and are now being greatly harmed, damaged and injured by the unlawful, wrongful and knowing acts of the defendants.

The prayer of the complaint is that the cause be advanced on the docket and be set for a speedy hearing; that a temporary injunction be issued to enjoin and restrain defendants from further denying and depriving minor plaintiffs, and the members of the class of persons that they represent of their rights, privileges and immunities as citizens of the United States, or the equal protection of the laws secured to them by the Constitution and laws of the United States on the basis or classification of race or color; that upon a final hearing the temporary injunction be made permanent, and that the defendants and their successors in office be enjoined and restrained "from assigning teachers, principals and other administrative personnel to the schools within the Special School District of Fort Smith, Arkansas, or any public school that is under the supervision or control of the defendants, on the basis of their race and color and on the basis of the race and color of the pupils in said district."

On October 7, 1963, defendants filed their joint answer, in which they specifically denied that they have discriminated against the plaintiffs or the class of persons whom plaintiffs represent, because of race and color.

The defendants incorporated in their answer a motion to strike sub sub-paragraph D of sub-paragraph 9 of paragraph IV of the complaint on the ground that the facts

therein alleged are insufficient to state a claim upon which plaintiffs are entitled to or can be granted any relief.

Paragraph III of the answer is as follows:

"The defendants allege that on July 16, 1956, the defendants and their predecessors in office as members of the Board of Directors of the Special School District of Fort Smith, Arkansas, voluntarily and unanimously adopted a Plan of desegregation applicable to all of the schools administered and maintained by the Special School District of [835] Fort Smith, Arkansas, which Plan is enunciated and set forth in an exchange of letters from the then President of the Board of Directors of the Special School District of Fort Smith under date January 5, 1956, addressed to the attorney member of the then Board of Directors of the District, Mr. Owen C. Pearce to Mr. Frank Beckman, President of the Board of Directors of the Special School District of Fort Smith under date of April 30, 1956, copies of which two said letters embodying said Plan of desegregation are annexed to this Answer as Exhibits A and B hereto and made a part hereof to the same extent at this point as if copied in full in this Answer.

"Defendants further allege that said Plan of desegregation was placed in full effect by the defendants and their predecessors in office upon the commencement of the school term in September 1957, at which term the First Grade in all of the elementary schools administered and maintained by the defendants was fully desegregated under said Plan and at which time